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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 GUARDIAN MEDIA
12 TECHNOLOGIES, LTD,

13 Plaintiff,

14 v.

15 AMAZON.COM, INC., *et al.*

16 Defendant.

Case No. 2:13-cv-08369 PSG (PLAx)

PROTECTIVE ORDER

Honorable Paul L. Abrams

17 **GOOD CAUSE STATEMENT**

18 Disclosure and discovery activity in this action are likely to involve
19 production of confidential license and settlement agreements, sales information,
20 schematics, source code, technical documentation or other confidential research,
21 development, commercial, proprietary, or private information for which special
22 protection from public disclosure and from use for any purpose other than this
23 litigation may be warranted. Accordingly, the parties hereby stipulate to and
24 request that the Court enter the following Protective Order pursuant to Rule 26(c)
25 of the Federal Rules of Civil Procedure.

26 The parties believe that good cause exists for the entry of this Order because
27 protected material constitutes confidential or proprietary information, the
28 disclosure of which is likely to have the effect of harming the competitive position

1 of the designating party or violating an obligation of confidentiality owed to a third
2 party.

3 Protected material designated under the terms of this Order shall be used by
4 a receiving party solely for this litigation and shall not be used directly or
5 indirectly for any other purpose whatsoever, and its disclosure is prohibited except
6 as expressly provided in this Order.

7 The parties acknowledge that this Order does not confer blanket protections
8 on all disclosures or responses to discovery. Designations of confidentiality shall
9 be made with care and shall not be made absent a good faith belief that the
10 Protected Material satisfies the criteria set forth below for each category.

11 **1. PURPOSE AND LIMITS OF THIS ORDER**

12 Discovery in this action is likely to involve confidential, proprietary, or
13 private information containing or reflecting financial information, contractual
14 terms, or the design and operation of products such as financial statements and
15 records, license and settlement agreements, design specifications, source code, etc.
16 Such information may require special protection from public disclosure and from
17 use for any purpose other than this litigation. Thus, the Court enters this Protective
18 Order. This Order does not confer blanket protections on all disclosures or
19 responses to discovery, and the protection it gives from public disclosure and use
20 extends only to the specific material entitled to confidential treatment under the
21 applicable legal principles.

22 This Order does not automatically authorize the filing under seal of material
23 designated under this Order. Instead, the parties must comply with L.R. 79-5.1 if
24 they seek to file anything under seal. *See* Section 10 (“Filing Under Seal”) below.

25 This Order applies to all pre-trial proceedings but does not govern the use at
26 trial of material designated under this Order. The parties agree that a separate
27 confidentiality agreement will govern the trial in this matter. The parties agree to
28 negotiate such agreement prior to trial to govern the use of information designated

under this Order and documents during trial. Counsel for the parties will submit such agreement (or their respective proposals, if no agreement can be reached) to the Court for consideration.

2. DESIGNATING PROTECTED MATERIAL

2.1 Over-Designation Prohibited. Any party or non-party who designates information or items for protection under this Order as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” (a “designator”) must only designate specific material that qualifies under the appropriate standards. To the extent practicable, only those parts of documents, items, or oral or written communications that require protection shall be designated. Designations with a higher confidentiality level when a lower level would suffice are prohibited. Mass, indiscriminate, or routinized designations are prohibited. Unjustified designations expose the designator to sanctions, including the Court’s striking all confidentiality designations made by that designator. Designation under this Order is allowed only if the designation is necessary to protect material that, if disclosed to persons not authorized to view it, would cause competitive or other recognized harm. Material may not be designated if it has been made public, or if designation is otherwise unnecessary to protect a secrecy interest. If a designator learns that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that designator must promptly notify all parties that it is withdrawing the mistaken designation.

2.2 Manner and Timing of Designations. Designation under this Order requires the designator to affix the applicable legend (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE”) to each page that contains protected material. For testimony given in deposition or other proceeding, the designator shall specify all protected testimony and the level of protection being asserted. It

1 may make that designation during the deposition or proceeding, or may invoke, on
2 the record or by written notice to all parties on or before the next business day, a
3 right to have up to 21 days from the deposition or proceeding to make its
4 designation.

5 **2.2.1** A party or non-party that makes original documents or
6 materials available for inspection need not designate them for protection
7 until after the inspecting party has identified which material it would like
8 copied and produced. During the inspection and before the designation, all
9 material shall be treated as HIGHLY CONFIDENTIAL – ATTORNEY
10 EYES ONLY. After the inspecting party has identified the documents it
11 wants copied and produced, the producing party must designate the
12 documents, or portions thereof, that qualify for protection under this Order.

13 **2.2.2** Parties shall give advance notice if they expect a deposition or
14 other proceeding to include designated material so that the other parties can
15 ensure that only authorized individuals are present at those proceedings
16 when such material is disclosed or used. The use of a document as an
17 exhibit at a deposition shall not in any way affect its designation.
18 Transcripts containing designated material shall have a legend on the title
19 page noting the presence of designated material. The designator shall
20 inform the court reporter of these requirements. Any transcript that is
21 prepared before the expiration of the 21-day period for designation shall be
22 treated during that period as if it had been designated HIGHLY
23 CONFIDENTIAL – ATTORNEY EYES ONLY unless otherwise agreed.
24 After the expiration of the 21-day period, the transcript shall be treated only
25 as actually designated.

26 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to
27 designate does not, standing alone, waive protection under this Order. Upon timely
28 assertion or correction of a designation, all recipients must make reasonable efforts

1 to ensure that the material is treated according to this Order.

2 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

3 All challenges to confidentiality designations shall proceed under L.R. 37-1
4 through L.R. 37-4.

5 **4. ACCESS TO DESIGNATED MATERIAL**

6 **4.1 Basic Principles.** A receiving party may use designated material only
7 for this litigation. Designated material may be disclosed only to the categories of
8 persons and under the conditions described in this Order.

9 **4.2 Disclosure of CONFIDENTIAL Material Without Further**
10 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the
11 designator, a receiving party may disclose any material designated
12 CONFIDENTIAL only to:

13 **4.2.1** The receiving party's outside counsel of record in this action
14 and employees of outside counsel of record to whom disclosure is
15 reasonably necessary;

16 **4.2.2** The officers, directors, and employees of the receiving party to
17 whom disclosure is reasonably necessary, and who have signed the
18 Agreement to Be Bound (Exhibit A);

19 **4.2.3** Experts retained by the receiving party's outside counsel of
20 record to whom disclosure is reasonably necessary, and who have signed the
21 Agreement to Be Bound (Exhibit A);

22 **4.2.4** The Court and its personnel;

23 **4.2.5** Outside court reporters and their staff, professional jury or trial
24 consultants, and professional vendors to whom disclosure is reasonably
25 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

26 **4.2.6** During their depositions, witnesses in the action and their
27 outside counsel to whom disclosure is reasonably necessary and who have
28 signed the Agreement to Be Bound (Exhibit A); and

1 **4.2.7** The author or recipient of a document containing the material, or a
 2 custodian or other person who otherwise possessed or knew the information, and
 3 such person's outside counsel who have signed the Agreement to Be Bound
 4 (Exhibit A).

5 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**
 6 **ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without**
 7 **Further Approval.** Unless permitted in writing by the designator, a receiving
 8 party may disclose material designated HIGHLY CONFIDENTIAL –
 9 ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE
 10 without further approval only to:

11 **4.3.1** The receiving party's outside counsel of record in this action
 12 and employees of outside counsel of record to whom it is reasonably
 13 necessary to disclose the information;

14 **4.3.2** The Court and its personnel;

15 **4.3.3** Outside court reporters and their staff, professional jury or trial
 16 consultants, and professional vendors to whom disclosure is reasonably
 17 necessary, and who have signed the Agreement to Be Bound (Exhibit A);
 18 and

19 **4.3.4** The author or recipient of a document containing the material,
 20 or a custodian or other person who otherwise possessed or knew the
 21 information, and such person's outside counsel who have signed the
 22 Agreement to Be Bound (Exhibit A).

23 **4.4 Procedures for Approving or Objecting to Disclosure of**
 24 **CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEY EYES**
 25 **ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE Material to In-**
 26 **House Counsel or Experts.** Unless agreed to in writing by the designator:

27 **4.4.1** A party seeking to disclose to in-house counsel any material
 28 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must

1 first make a written request to the designator providing the full name of the
2 in-house counsel, the city and state of such counsel's residence, and such
3 counsel's current and reasonably foreseeable future primary job duties and
4 responsibilities in sufficient detail to determine present or potential
5 involvement in any competitive decision-making; supervising litigation,
6 including participating in decisions regarding settlement of litigation, does
7 not constitute competitive decision-making . In-house counsel are not
8 authorized to receive material designated HIGHLY CONFIDENTIAL –
9 SOURCE CODE.

10 **4.4.2** A party seeking to disclose to an expert retained by outside
11 counsel of record any information or item that has been designated
12 CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEY EYES
13 ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE must first make a
14 written request to the designator that (1) identifies the category or categories
15 of information, i.e., CONFIDENTIAL, HIGHLY CONFIDENTIAL –
16 ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE
17 CODE information that the receiving party seeks permission to disclose to
18 the expert, (2) sets forth the full name of the expert and the city and state of
19 his or her primary residence, (3) attaches a copy of the expert's current
20 resume, (4) identifies the expert's current employer(s), (5) identifies each
21 person or entity from whom the expert has received compensation or
22 funding for work in his or her areas of expertise (including in connection
23 with litigation) in the past five years, and (6) identifies (by name and number
24 of the case, filing date, and location of court) any litigation where the expert
25 has offered expert testimony, including by declaration, report, or testimony
26 at deposition or trial, in the past five years. If the expert believes any of this
27 information at (4) - (6) is subject to a confidentiality obligation to a third
28 party, then the expert should provide whatever information the expert

believes can be disclosed without violating any confidentiality agreements, and the party seeking to disclose the information to the expert shall be available to meet and confer with the designator regarding any such confidentiality obligations.

4.4.3 A party that makes a request and provides the information specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the identified in-house counsel or expert unless, within seven days of delivering the request, the party receives a written objection from the designator providing detailed grounds for the objection.

4.4.4 All challenges to objections from the designator shall proceed under L.R. 37-1 through L.R. 37-4.

5. SOURCE CODE

5.1 Designation of Source Code. If production of source code is necessary, a party may designate it as HIGHLY CONFIDENTIAL – SOURCE CODE if it is, or includes, confidential, proprietary, or trade secret source code.

5.2 Location and Supervision of Inspection. Any HIGHLY CONFIDENTIAL – SOURCE CODE produced in discovery shall be made available for inspection, in a format allowing it to be reasonably reviewed and searched, during normal business hours or at other mutually agreeable times, at an office of the designating party's counsel or another mutually agreeable location. The source code shall be made available for inspection on a secured computer in a secured room, and the inspecting party shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable media or recordable device. The designator may visually monitor the activities of the inspecting party's representatives during any source code review, but only to ensure that there is no unauthorized recording, copying, or transmission of the source code.

5.3 Paper Copies of Source Code Excerpts. The inspecting party may request paper copies of limited portions of source code that are reasonably

1 necessary for the preparation of court filings, pleadings, expert reports, other
2 papers, or for deposition or trial. The designator shall provide all such source code
3 in paper form, including Bates numbers and the label “HIGHLY CONFIDENTIAL
4 – SOURCE CODE.”

5 **5.4 Access Record.** The inspecting party shall maintain a record of any
6 individual who has inspected any portion of the source code in electronic or paper
7 form, and shall maintain all paper copies of any printed portions of the source code
8 in a secured, locked area. The inspecting party shall not convert any of the
9 information contained in the paper copies into any electronic format other than for
10 the preparation of a pleading, exhibit, expert report, discovery document,
11 deposition transcript, or other Court document. Any paper copies used during a
12 deposition shall be retrieved at the end of each day and must not be left with a
13 court reporter or any other unauthorized individual.

14 **6. PROSECUTION BAR**

15 Absent written consent from the designator, any individual who receives
16 access to HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
17 CONFIDENTIAL – SOURCE CODE information shall not be involved in the
18 prosecution of patents or patent applications concerning the field of the invention
19 of the patents-in-suit for the receiving party or its acquirer, successor, predecessor,
20 or other affiliate during the pendency of this action and for one year after its
21 conclusion, including any appeals. “Prosecution” means drafting, amending,
22 advising on the content of, or otherwise affecting the scope or content of patent
23 claims or specifications. These prohibitions shall not preclude counsel from
24 participating in reexamination or *inter partes* review proceedings to challenge or
25 defend the validity of any patent, but counsel may not participate in the drafting of
26 amended claims in any such proceedings.

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1 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION**

3 **7.1 Subpoenas and Court Orders.** This Order in no way excuses non-
4 compliance with a lawful subpoena or court order. The purpose of the duties
5 described in this section is to alert the interested parties to the existence of this
6 Order and to give the designator an opportunity to protect its confidentiality
7 interests in the court where the subpoena or order issued.

8 **7.2 Notification Requirement.** If a party is served with a subpoena or a
9 court order issued in other litigation that compels disclosure of any information or
10 items designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL
11 – ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE,
12 that party must:

13 **7.2.1** Promptly notify the designator in writing. Such notification
14 shall include a copy of the subpoena or court order;

15 **7.2.2** Promptly notify in writing the party who caused the subpoena
16 or order to issue in the other litigation that some or all of the material
17 covered by the subpoena or order is subject to this Order. Such notification
18 shall include a copy of this Order; and

19 **7.2.3** Cooperate with all reasonable procedures sought by the
20 designator whose material may be affected.

21 **7.3 Wait For Resolution of Protective Order.** If the designator timely
22 seeks a protective order, the party served with the subpoena or court order shall not
23 produce any information designated in this action as CONFIDENTIAL, HIGHLY
24 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
25 SOURCE CODE before a determination by the court where the subpoena or order
26 issued, unless the party has obtained the designator's permission. The designator
27 shall bear the burden and expense of seeking protection of its confidential material
28 in that court.

1 **8. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
3 designated material to any person or in any circumstance not authorized under this
4 Order, it must immediately (1) notify in writing the designator of the unauthorized
5 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
6 designated material, (3) inform the person or persons to whom unauthorized
7 disclosures were made of all the terms of this Order, and (4) use reasonable efforts
8 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

9 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**
10 **OTHERWISE PROTECTED MATERIAL**

11 When a producing party gives notice that certain inadvertently produced
12 material is subject to a claim of privilege or other protection, the obligations of the
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
14 This provision is not intended to modify whatever procedure may be established in
15 an e-discovery order that provides for production without prior privilege review
16 pursuant to Federal Rule of Evidence 502(d) and (e).

17 **10. FILING UNDER SEAL**

18 Without written permission from the designator or a Court order, a party
19 may not file in the public record in this action any designated material. A party
20 seeking to file under seal any designated material must comply with L.R. 79-5.1.
21 Filings may be made under seal only pursuant to a court order authorizing the
22 sealing of the specific material at issue. The fact that a document has been
23 designated under this Order is insufficient to justify filing under seal. Instead,
24 parties must explain the basis for confidentiality of each document sought to be
25 filed under seal. In addition, if the filing relates to a dispositive motion, the party
26 seeking to file under seal must show “compelling reasons” for sealing such
27 materials. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180-81
28 (9th Cir. 2006). Because a party other than the designator will often be seeking to

1 file designated material, cooperation between the parties in preparing, and in
2 reducing the number and extent of, requests for under seal filing is essential. If a
3 *receiving party's* request to file designated material under seal pursuant to L.R. 79-
4 5.1 is denied by the Court, then the receiving party *may file the material in the*
5 *public record* unless (1) *the designator* seeks reconsideration within four days of
6 the denial, or (2) as otherwise instructed by the Court.

7 **11. FINAL DISPOSITION**

8 Within 60 days after the final disposition of this action, each party shall
9 return all designated material to the designator or destroy such material, including
10 all copies, abstracts, compilations, summaries, and any other format reproducing or
11 capturing any designated material. The receiving party must submit a written
12 certification to the designator by the 60-day deadline that (1) identifies (by
13 category, where appropriate) all the designated material that was returned or
14 destroyed, and (2) affirms that the receiving party has not retained any copies,
15 abstracts, compilations, summaries, or any other format reproducing or capturing
16 any of the designated material, except as permitted by this Order. This provision
17 shall not prevent counsel from retaining an archival copy of all pleadings, motion
18 papers, trial, deposition, and hearing transcripts, legal memoranda,
19 correspondence, deposition and trial exhibits, expert reports, attorney work
20 product, and consultant and expert work product, even if such materials contain
21 designated material. Any such archival copies remain subject to this Order.

22
23 IT IS SO ORDERED.

24
25 DATED: November 24, 2014



26 Paul L. Abrams
27 United States Magistrate Judge
28

EXHIBIT A

AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Protective Order that was issued
by the United States District Court for the Central District of California on
_____ [date] in the case of _____ **[insert formal name of the case and
the number and initials assigned to it by the court]**. I agree to comply with and
to be bound by all the terms of this Protective Order, and I understand and
acknowledge that failure to so comply could expose me to sanctions and
punishment for contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Protective Order to any person or
entity except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Central District of California for the purpose of enforcing this Order,
even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]